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13 UNITED PARCEL SERVICE, INC.

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16

17 **GARY KAREN MARTIROSYAN,**

18 **Plaintiff,**

19 **v.**

20 **UNITED PARCEL SERVICE, INC.,**  
21 **a corporation, and DOES 1 - 100,**  
22 **inclusive,**

23 **Defendants.**

**Case No. 2:23-cv-01094**

**DEFENDANT'S NOTICE OF  
REMOVAL OF CIVIL ACTION  
FROM STATE COURT**

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PLEASE TAKE NOTICE THAT Defendant United Parcel Service, Inc. (“Defendant”) removes this matter from the Los Angeles County Superior Court to the United States District Court for the Central District of California under 28 U.S.C. §§ 1331, 1332, 1441, and 1446. The grounds for removal are set forth below.

## **I. CLAIMS ASSERTED IN THE COMPLAINT**

1. On January 10, 2023, plaintiff Gary Karen Martirosyan (“Plaintiff”), filed a civil lawsuit (the “Complaint”) against Defendant in Los Angeles County Superior Court, Case No. 23STCV00458, *Gary Karen Martirosyan, Plaintiff v. United Parcel Service, Inc.; and DOES 1 through 100, inclusive, Defendants*.

2. In his Complaint, Plaintiff alleges that Defendant has employed him since March 1995 and that in April 2020 he suffered an on-the-job injury which led the company doctor to place work restrictions. (See Complaint, attached hereto as Exhibit A (“Compl.”), ¶¶ 8, 9-10.) Plaintiff alleges that Defendant knowingly failed to engage in the interactive process and reasonably accommodate his disability in violation of the California Fair Employment and Housing Act (“FEHA”), and he has suffered emotional distress as a result of Defendant’s conduct. (See generally *id.*)

3. In the Complaint, Plaintiff asserts claims for: (1) disparate treatment in violation of FEHA; (2) discrimination in violation of FEHA; (3) failure to provide reasonable accommodation; (4) failure to engage in a good faith interactive process; (5) failure to prevent discrimination, harassment and retaliation; (6) retaliation in violation of FEHA; (7) hostile work environment in violation of FEHA; (8) negligent infliction of emotional distress; and (9) intentional infliction of emotional distress.

## **II. COMPLIANCE WITH STATUTORY REQUIREMENTS**

4. On January 13, 2023, Plaintiff served Defendant with the Summons, Complaint, Civil Case Cover Sheet, and Notice of Case Management Conference.

1 Defendant's removal of this action is therefore timely because Defendant is  
2 removing this matter within 30 days of completion of service of the Complaint. *See*  
3 28 U.S.C. § 1446(b); Cal. Code Civ. P. §§ 415.10, 415.30. In accordance with 28  
4 U.S.C. § 1446(a), copies of Plaintiff's Summons, Complaint, Civil Case Cover  
5 Sheet, and Notice of Case Management Conference are attached to this Notice of  
6 Removal as Exhibit A.

7 5. Defendant filed its Answer to Plaintiff's Complaint in state court on  
8 February 9, 2023. A copy of Defendant's Answer is attached to this Notice of  
9 Removal as Exhibit B. Exhibits A and B constitute all pleadings, process, and  
10 orders served on Defendant within the State Court Action.

11 6. Pursuant to 28 U.S.C. § 1446(d), Defendant will provide written notice  
12 of removal of the Action to Plaintiff, and promptly will file a copy of this Notice of  
13 Removal with the Clerk of the Superior Court of the State of California, County of  
14 Riverside. A copy of Defendant's Notice to State Court and Adverse Party of  
15 Removal of Action from State Court to the United States District Court for the  
16 Central District of California (without exhibits) is attached to this Notice of  
17 Removal as Exhibit C.

### 18 **III. VENUE AND INTRADISTRICT ASSIGNMENT**

19 7. Venue lies in the United States District Court of the Central District of  
20 California under 28 U.S.C. § 1391(a) and 1441(a), because the Complaint was filed  
21 in this District in the Los Angeles County Superior Court. Pursuant to 28 U.S.C.  
22 § 1441(a), this case may properly be removed to the Central District of California,  
23 Western Division, because Plaintiff filed this case in the Superior Court of  
24 California, County of Los Angeles.

### 25 **IV. JURISDICTION: DIVERSITY**

26 8. This Court has original jurisdiction over this action under 28 U.S.C. §  
27 1332 because this is an action between citizens of different states, and the amount  
28 in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

1           9.     **Plaintiff's Citizenship.** Plaintiff is resident of California. (Compl. ¶  
 2 1.) Plaintiff alleges, "Plaintiff GARY KAREN MARTIROSYAN [] is an was and  
 3 was an individual residing in the County of Los Angeles, State of California [.]"  
 4 (*Id.*) Plaintiff is, and at all times since commencement of this action has been, a  
 5 citizen and resident of the State of California within the meaning of 28 U.S.C. §  
 6 1332(a).

7           10.    **Defendant's Citizenship.** Under 28 U.S.C. § 1332(c), "a corporation  
 8 shall be deemed to be a citizen of any State in which it has been incorporated, and  
 9 of the State where it has its principal place of business." Defendant United Parcel  
 10 Service, Inc. is a corporation formed under the laws of Ohio. (Declaration of Ryan  
 11 Swift ("Swift Decl."), attached hereto as Exhibit D, ¶ 3.) Defendant's headquarters  
 12 are located in Atlanta, Georgia, which is where its officers direct, control, and  
 13 coordinate the company's activities, and where Defendant's executive,  
 14 administrative, financial, and management functions are concentrated. (Swift  
 15 Decl., ¶ 4.) Accordingly, Defendant is a citizen of the states of Ohio and Georgia.  
 16 It is not a citizen of the State of California for removal purposes.

17           11.    **Doe Defendants.** Pursuant to 28 U.S.C. § 1441(a), the residence of  
 18 fictitious and unknown defendants should be disregarded for purposes of establishing  
 19 removal jurisdiction under 28 U.S.C. § 1332. *Fristoe v. Reynolds Metals Co.*, 615  
 20 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a  
 21 removal petition). Thus, the existence of Doe defendants 1 through 100 does not  
 22 defeat complete diversity.

23           12.    **Amount in Controversy.** Although Defendant does not concede  
 24 liability in any way, the amount in controversy in this action, exclusive of interest  
 25 and costs, exceeds the sum of \$75,000 as required by 28 U.S.C. § 1332(a). *See*  
 26 *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 793 (9th Cir.  
 27 2018). Plaintiff seeks to recover lost wages, benefits, salary increases and income,  
 28 civil and statutory penalties, emotional distress damages, punitive damages,

1 declaratory relief, and costs and attorneys' fees. (Compl. ¶¶ 33- 34, 37-38, 41-42,  
2 45-46, 50-51, 54-55, 59-60, 64-65, 69-70, and Prayer for Relief.)

3 13. The Complaint makes no specific statements as to the amount in  
4 controversy. When a specific amount of damages is not alleged in the complaint, a  
5 defendant only must show that "it is more likely than not" that the amount exceeds  
6 the jurisdictional amount of \$75,000. *See Sanchez v. Monumental Life Ins.*, 95 F.3d  
7 856, 862 (9th Cir. 1996), *amended and superseded on other grounds* 102 F.3d 398  
8 (9th Cir. 1996). As explained by the Ninth Circuit, "the amount-in-controversy  
9 inquiry in the removal context is not confined to the face of the complaint." *Valdez*  
10 *v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (finding that the Court may  
11 consider information presented in the removal petition). In determining whether a  
12 complaint meets the \$75,000 threshold of 23 U.S.C. § 1332(a), a court may  
13 consider the aggregate value of claims for compensatory and punitive damages, as  
14 well as attorneys' fees. *See Bell v. Preferred Life Ass. Soc'y*, 320 U.S. 238, 240  
15 (1943) ("Where both actual and punitive damages are recoverable under a  
16 complaint, each must be considered to the extent claimed in determining  
17 jurisdictional amount."); *Goldberg v. CPC Int'l, Inc.* 678 F.2d 1365, 1367 (9th Cir.  
18 1982) *cert. denied*, 459 U.S. 945 (1982) (attorneys' fees may be taken into account  
19 to determine jurisdictional amount).

20 14. A notice of removal "need include only a plausible allegation that the  
21 amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin*  
22 *Operating Co. v. Owens*, 574 U.S. 81. 89 (2014). A removing defendant may  
23 establish the amount in controversy through allegations and is not required to  
24 present admissible evidence unless the removal is challenged by a court or through  
25 a motion or remand. *See id.*, at 87-88.

26 15. The aggregate amount in controversy based on Plaintiff's alleged  
27 claims well exceeds the amount in controversy threshold of \$75,000 necessary to  
28

1 establish diversity jurisdiction using the conservative estimates as follows<sup>1</sup>:

2       16. Emotional Distress Damages. The amount in controversy will include  
3 the amount of money Plaintiff might recover for his alleged emotional injuries that  
4 he attributes to Defendant's allegedly unlawful and discriminatory conduct.  
5 Plaintiff claims that as a result of Defendant's action, he "has suffered non-  
6 economic damages" that "include but are not limited to the fear, humiliation,  
7 emotional distress, and mental, or emotional or physical pain and anguish that has  
8 been and/or will be foreseeably be experienced by plaintiff, all to his damage and  
9 detriment [.]” (*See generally* Compl.; Prayer ¶ 1.) The “vagueness of plaintiff’s  
10 pleadings with regard to emotional distress damages should not preclude this Court  
11 from noting that these damages are potentially substantial.” *Richmond v. Allstate*  
12 *Insurance Co.* 897 F. Supp. 447, 450 (S.D. Cal. 1995).

13       17. In cases alleging retaliation and discrimination, the emotional distress  
14 damages awarded alone often exceed the \$75,000 amount in controversy threshold.  
15 In *Qiu v. Three Rivers Provider Network, Inc.*, 2019 WL 7762121 (San Diego  
16 County Superior Court, October 15, 2019), the jury awarded the plaintiff  
17 \$2,500,000 in emotional distress damages based on claims of wrongful termination.  
18 *See also* *Tilkey v. Allstate Ins. Co.*, 2018 WL 3726939 (San Diego County Superior  
19 Court, May 4, 2018) (awarding \$1,974,915 for emotional distress damages to a  
20 plaintiff claiming wrongful termination). These awards demonstrate that plaintiffs  
21 bringing claims for discrimination or retaliation in California courts may recover  
22 money damages for alleged emotional distress that substantially exceed the amount  
23 in controversy threshold.

24       18. Further, in cases alleging failure to accommodate a disability, jury  
25 verdicts in favor of plaintiffs often exceed the amount in controversy. In *Alejandro*

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27 <sup>1</sup> In providing the amount in controversy for purposes of removal, Defendant does  
28 not concede or acknowledge in any way that the allegations in Plaintiff's Complaint  
are accurate, that the allegations state a claim upon which relief may be granted, or  
that Plaintiff is entitled to any amount under any claim or cause of action.

1 *Gonzalez v. Swissport SA, LLC, et al.*, Case No. BC685391, 2020 Jury Verdicts  
2 LEXIS 420426 (Los Angeles County Superior Court, Feb. 10, 2020), a jury  
3 awarded the plaintiff \$800,000 in damages for emotional distress resulting from his  
4 employer's termination of his employment after he requested a reasonable  
5 accommodation on the amount of weight he was able to lift.

6 19. Here, conservatively estimating that Plaintiff's allegations of  
7 "emotional distress and anxiety" place **\$50,000** controversy. Notably, it would be  
8 appropriate based on prior California jury verdicts awarding substantial damages  
9 for emotional distress to conclude that the amount placed in controversy by  
10 Plaintiff's claims of physical and emotional injury alone (without adding  
11 compensatory damages of "lost wages") exceeds the \$75,000 threshold.

12 20. Punitive Damages. In addition to seeking lost wages, benefits,  
13 penalties, and damages for emotional distress, Plaintiff furthers seek to recover  
14 what is often the most lucrative form of relief in a suit of this nature: punitive  
15 damages. (Compl. ¶¶ 1, 34, 38, 42, 46, 51, 55; Prayer ¶ 7.) The amount in  
16 controversy determination may include punitive damages when they are  
17 recoverable as a matter of law. *Rodriguez v. Home Depot, U.S.A., Inc.*, No. 16-CV-  
18 01945-JCS, 2016 WL 3902838, at \*5 (N.D. Cal. July 19, 2016). Punitive damages  
19 are recoverable under FEHA. *Avila v. Kiewit Corp.*, No. CV 19-5740-MWF-JPR,  
20 2019 U.S. Dist. LEXIS 167288, at \*11-\*13 (C.D. Cal. Sept. 26, 2019). The amount  
21 of punitive damages may be established by examining jury verdicts in cases  
22 involving similar facts. *Id.*

23 21. Juries regularly return verdicts when the plaintiff asserts a claim for  
24 disability discrimination under FEHA. (See *Simmons v. PCR Tech.*, 209 F. Supp.  
25 2d 1029, 1033 (N.D. Cal. 2002) (noting that a review of reported jury verdicts  
26 "amply demonstrate the potential for large punitive damages" in a case alleging  
27 employment discrimination and retaliation); *Roby v. McKesson Corp.*, 47 Cal. 4th  
28 686 (2009) (affirming jury verdicts exceeding \$1 million in punitive damages in

1 alleged retaliation case). Assuming for purposes of removal only that the punitive  
2 damages claim put in controversy a mere **\$150,000** for Plaintiff, Defendant has  
3 satisfied the amount in controversy for purposes of diversity.

4 22. Attorneys' Fees. Finally, Plaintiff seeks to recover statutory attorneys'  
5 fees pursuant to California Government Code section 12965. (Prayer ¶ 6.)  
6 Statutory attorneys' fees are considered when evaluating the amount in controversy  
7 for purposes of determining diversity jurisdiction. *See, e.g., Galt G/S v. JSS*  
8 *Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("[W]here an underlying statute  
9 authorizes an award of attorneys' fees, either with mandatory or discretionary  
10 language, such fees may be included in the amount in controversy."); *Simmons v.*  
11 *PCR Tech.*, 209 F. Supp. 2d 1029, 1035 (N.D. Cal. 2002) (holding that where  
12 attorneys' fees are "recoverable by statute," fees reasonably anticipated over the life  
13 of the litigation are included in the amount in controversy analysis.)

14 23. Attorneys' fees in cases of this nature, which are taken through trial,  
15 routinely exceed \$75,000. *See, e.g., Crawford v. DIRECTV, Inc.*, 2010 WL  
16 5383296 (Los Angeles County Sup. Ct.) (approving attorneys' fee award of  
17 \$159,762.50); *Denenberg v. Cal. Dep't of Transp.*, 2006 WL 5305734 (San Diego  
18 County Sup. Ct.) (attorneys' fee award of \$490,000 for claims). Assuming for  
19 purposes of removal only that Plaintiff's counsel will incur attorneys' fees of a very  
20 conservative **\$100,000** to prosecute Plaintiff's claims through trial, Defendant has,  
21 when this attorneys' fee amount is combined with the other amounts in dispute,  
22 satisfied the amount in controversy for purposes of establishing diversity  
23 jurisdiction.

24 24. To be clear, Defendant does not concede that Plaintiff has been  
25 damaged in any amount or at all, or that he will prevail on any of his claims. If  
26 Plaintiff does prevail on his claims, however, the combined total of Plaintiff's  
27 claims for lost past and future wages, emotional distress damages, penalties,  
28 punitive damages, and attorneys' fees that may be awarded exceed this Court's

jurisdictional minimum, as is shown by the chart below.

<u>TYPE OF RELIEF SOUGHT</u>	<u>AMOUNT IN CONTROVERSY</u>
Emotional Distress	\$50,000
Punitive Damages	\$150,000
Attorneys' Fees	\$100,000
<b><u>TOTAL</u></b>	<b>\$300, 000</b>

25. The \$75,000 amount in controversy requirement for diversity jurisdiction is easily satisfied in this matter.

#### **V. JURISDICTION: FEDERAL QUESTION**

26. Alternatively, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, and removal is proper under 28 U.S.C. § 1441(a) because the Complaint is founded upon claims “arising under the laws of the United States.” At all relevant times, Defendant has been and is now a corporation engaging in commerce in an industry affecting commerce within the meaning of section 301(a) of the Labor Relations Management Act (“LMRA”),

27. Removal jurisdiction exists where, although only state law claims are pleaded, those claims are completely preempted by federal law. *See Bryan v. BellSouth Commc’ns, Inc.*, 377 F.3d 424, 428–29 (4th Cir. 2004). “To remove a state law claim to federal court under the complete preemption doctrine, federal law must both completely preempt the state law claim, and supplant it with a federal claim.” *Young v. Anthony’s Fish Grottos, Inc.*, 830 F.2d 993, 997–98 (9th Cir. 1987). To be clear, where a state law claim is completely preempted and supplanted by federal law, preemption is not “merely asserted as a defense” but rather is sufficient to create removal jurisdiction. *Id.*

28. All state law claims raised by employees who are represented by a union and that require interpretation of a CBA must be brought under Section 301. *Allis Chalmers Corp. v. Lueck*, 471 U.S. 202, 211 (1985). “Although normally

1 federal preemption is a defense that does not authorize removal to federal court, §  
2 301 has such extraordinary preemptive power that it converts an ordinary state  
3 common law complaint into one stating a federal claim for purposes of the well-  
4 pleaded complaint rule. In other words, a civil complaint raising claims preempted  
5 by § 301 raises a federal question that can be removed to federal court.” *Curtis et*  
6 *al. v. Irwin Industries, Inc.*, 913 F.3d 1146, 1152 (9th Cir. 2019). The Supreme  
7 Court explained the reasoning behind this rule: “[I]f the resolution of a state-law  
8 claim depends upon the meaning of a collective bargaining agreement, the  
9 application of state law . . . is preempted and federal labor principles—necessarily  
10 uniform through the nation—must be employed to resolve the dispute.” *Lingle v.*  
11 *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 405–06 (1988).

12 29. Plaintiff was at all relevant times, through the termination of his  
13 employment, an employee of Defendant and represented by the International  
14 Brotherhood of Teamsters Union Local 396 (the “Union”). (Declaration of Byron  
15 Bravo (“Bravo Decl.”), attached hereto as Exhibit E, ¶ 3.) At all times up to and  
16 including the date of termination of Plaintiff’s employment with Defendant, the  
17 Union and Defendant were parties to a written CBA, the National Master United  
18 Parcel Service Agreement (the “NMA”), which sets forth the terms and conditions  
19 governing the employment of Plaintiff and other individuals in an appropriate  
20 bargaining unit. (Bravo Decl, ¶ 4, Ex. 1.) The current agreement, which includes  
21 the Union’s Southwestern Package Rider (“Package Rider”), Southwestern Sort  
22 Rider (“Sort Rider”) and Defendant’s Western Region Supplement (“WRS”),  
23 contains provisions regarding alternative work assignments as a result of on-the-job  
24 injuries, disability and leave compensation, and require a procedure for employee  
25 grievances. (Bravo Decl., ¶¶ 4-4, Exs. 1, 2, 3).

- 26 • Article 14 of the NMA governs compensation claims for employees injured
- 27 on the job (NMA at 35-3);
- 28 • Article 14, Subsection 2 governs temporary alternate work assignments,

1 including requirements for offering “temporary work opportunity to those  
2 employees who are unable to perform their normal work assignment due to  
3 an on-the-job injury” (NMA at 36-37);

- 4 • Article 14, Subsection 3 of the NMA governs the process for providing  
5 reasonable accommodations to a bargaining unit employee, including the  
6 possibility of a part-time job as an accommodation (NMA at 38-29);
- 7 • Section 20 of the Package Rider addresses disability and sick leave, including  
8 procedures for giving employees different employment classifications when  
9 declared permanently medically incapacitated (Package Rider at 266-268);
- 10 • Section 15 of the Sort Rider addresses earned sick when an employee is  
11 receiving worker’s compensation or unemployment compensation disability  
12 benefits (Sort Rider at 343); and
- 13 • Addendum No. 2 to the Sort Rider governs the grievance procedure for any  
14 complaints asserted by employees represented by Local 396. (Sort Rider at  
15 376).

16 30. Although Plaintiff does not allege that he is a union member and that  
17 he is governed by a CBA, the lack of such allegations does not affect Section 301  
18 preemption because resolution of Plaintiff’s claims turns on interpretation of  
19 provisions in the CBA. *See Young v. Anthony’s Fish Grottos, Inc.*, 830 F.2d 993,  
20 997 (9th Cir. 1987) (“The district court . . . properly looked beyond the face of the  
21 complaint to determine whether the contract claim was in fact a section 301 claim  
22 for breach of a collective bargaining agreement ‘artfully pleaded’ to avoid federal  
23 jurisdiction.”).

24 31. Because the resolution of the Complaint depends upon the  
25 interpretation of a written collective bargaining agreement and the CBA provides a  
26 detailed procedure for alternative work assignments, it is necessarily preempted by  
27 Section 301 of the LMRA. *See Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220-  
28 21 (1985); *see also Ruiz*, 2011 WL 3300098, at \*8. As noted above, the claims

1 alleged in the Complaint cannot be decided without interpreting the terms of the  
2 CBA, Riders, and Supplement. Here, Plaintiff's accommodation request, resulting  
3 from his alleged on-the-job injury, is dependent on the relevant provisions in the  
4 CBA noted above, and thus, this Court has original jurisdiction over Plaintiff's  
5 claims for disability discrimination, failure to accommodate, and failure to engage  
6 in interactive process.

7 32. Accordingly, the determination of Defendant's alleged liability in this  
8 Action will necessarily require an interpretation of the terms and provisions in the  
9 CBA documents. Thus, Plaintiff's Complaint falls within the preemptive scope of  
10 Section 301 of the LMRA, which provides that "[s]uits for violation of contracts  
11 between an employer and a labor organization representing employees... may be  
12 brought in any district court of the United States having jurisdiction of the parties,  
13 without respect to the amount in controversy or without regarding to the citizenship  
14 of the parties." 29 U.S.C. § 185.

## 15 **VI. SUPPLEMENTAL JURISDICTION**

16 33. Under 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction  
17 over Plaintiff's remaining state law causes of action, most of which are predicated  
18 on and related to Plaintiff's claims for failing to provide a reasonable  
19 accommodation, including engaging in the interactive process. Plaintiff's  
20 remaining state law causes of action arise from the same series of events so as to  
21 form part of the same case or controversy under Article III of the United States  
22 Constitution. *See Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 n.3, 123 S. Ct.  
23 2058, 156 L. Ed. 2d 1 (2003) ("[A] state claim can . . . be removed through the use  
24 of the supplemental jurisdiction statute, 28 U.S.C. § 1367(a), provided that another  
25 claim in the complaint is removable."); *see also Hernandez v. Pac. Mar. Ass'n*, 379  
26 Fed. App'x 668, 671 (9th Cir. 2010) ("Because the plaintiff's state law claims . . .  
27 [were] preempted by [§] 301 of the LMRA, the district court had federal question  
28 jurisdiction over at least some of the plaintiff's claims [and s]ubject matter

1 jurisdiction over the balance of the claims in the amended complaint was proper  
2 under 28 U.S.C. § 1367(a)."). As such, supplemental jurisdiction is appropriate.

3 **VII. CONCLUSION**

4 34. Based on the allegations above, this action is properly removed to this  
5 Court from the Superior Court of the State of California, County of Los Angeles.

6  
7 Dated: February 14, 2023

JONES DAY

8  
9 By: 

10 Liat L. Yamini  
11 Estefani Rodriguez

12 Attorneys for Defendant  
13 UNITED PARCEL SERVICE, INC.  
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